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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

VICTOR FARHOOD,

Plaintiff and Appellant,

v.

STRATACARE, LLC,

Defendant and Respondent.

B279993

(Los Angeles County
Super. Ct. No. BC592703)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Rafael A. Ongkeko, Judge. Affirmed.

Mancini & Associates, Marcus A. Mancini, Tara J. Licata;
Benedon & Serlin, Douglas G. Benedon, Gerald M. Serlin and
Melinda W. Ebelhar for Plaintiff and Appellant.

Brown Law Group, Stacy L. Fode and Arlene R. Yang for
Defendant and Respondent.

Plaintiff and appellant Victor Farhood (Farhood) appeals from a judgment following the trial court's order granting summary judgment in favor of defendant and respondent StrataCare, LLC (StrataCare) in an action brought under the Confidentiality of Medical Information Act (the Confidentiality Act; Civ. Code § 56 et seq.).¹ Because the undisputed facts demonstrate that StrataCare did not "disclose" Farhood's confidential medical information within the meaning of section 56.10, subdivision (a), we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Farhood retired after 33 years of service as a police officer employed by the City of Los Angeles (the City). He received workers' compensation medical benefits from the City, including a pension. Tristar Risk Management (Tristar) was the third-party administrator for the City's workers' compensation program,² and StrataCare provided associated bill review services. To validate that they were actually receiving the treatments billed to the City, StrataCare sent workers, including Farhood, monthly "Statement of Benefits" notifications.

Farhood contacted Tristar to request that his pension checks be sent directly to his credit union rather than to his home. Because StrataCare used the claims administration system to obtain Farhood's mailing address, the unintended result when Tristar changed the address in the system was that

¹ All further statutory references are to the Civil Code unless otherwise indicated.

² Although named as a defendant in the action below, Tristar is not a party to this appeal.

other mail related to Farhood's workers' compensation would be sent to him at the credit union's address.

Thus, StrataCare sent a statement of benefits dated October 5, 2014,³ to Farhood as the addressee but at the credit union's physical address. The name of the credit union was not included in the address field and did not appear anywhere on the envelope. Farhood later received a mailing from his credit union; inside the outer envelope from the credit union was the opened envelope sent by StrataCare containing the statement of benefits. The statement of benefits contained medical information, including the names of Farhood's prescription medications. Farhood assumed that someone at the credit union had viewed the statement of benefits and his confidential medical information, which caused him embarrassment.

Farhood filed a complaint alleging a single cause of action under the Confidentiality Act for the violation of section 56.10, subdivision (a), and seeking damages and fees under section 56.35. Relying on the conclusion in *Sutter Health v. Superior Court* (2014) 227 Cal.App.4th 1546 (*Sutter Health*) that "disclosure, under section 56.10, subdivision (a) implies an affirmative communicative act" (*id.* at p. 1556), the trial court granted StrataCare's motion for summary judgment because "there was no 'affirmative communicative act' by StrataCare to the credit union." Judgment was entered, and costs awarded to StrataCare.

This timely appeal followed.

³ All further references to the statement of benefits are to the one dated October 5, 2014, as this action exclusively challenges the alleged disclosure of that document.

DISCUSSION

Farhood argues that the trial court erred by granting summary judgment because the Confidentiality Act imposes liability—regardless of intent—“against a designated actor who in some way makes a patient’s confidential medical information available for viewing by an unauthorized person who does actually view it.” We do not agree that the Confidentiality Act imposes such broad liability and affirm the grant of summary judgment, because, under our interpretation of “disclose” as used in section 56.10, subdivision (a), the undisputed evidence shows that StrataCare did not disclose Farhood’s confidential medical information to the credit union.

I. Standard of Review

“We review de novo a trial court’s grant of summary judgment along with its resolution of any underlying issues of statutory construction. [Citation.] A trial court may only grant a motion for summary judgment if no triable issues of material fact appear and the moving party is entitled to judgment as a matter of law. [Citations.] The evidence must be viewed in the light most favorable to the nonmoving party. [Citation.]” (*Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.) “We may affirm on any ground supported by the record, and we are not bound by the trial court’s reasoning. [Citation.]” (*Ryder v. Lightstorm Entertainment, Inc.* (2016) 246 Cal.App.4th 1064, 1072.)

In interpreting a statute, “[w]e begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature’s enactment generally is the most reliable indicator of legislative intent.” [Citations.] The plain meaning controls if there is no

ambiguity in the statutory language.’ [Citation.] . . . ‘[O]ur task is to select the construction that comports most closely with the Legislature’s apparent intent, with a view to promoting rather than defeating the statutes’ general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.’ [Citation.]” (*Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1384–1385.)

II. Relevant Provisions of the Confidentiality Act

“The Confidentiality Act [citation] ‘is intended to protect the confidentiality of individually identifiable medical information obtained from a patient by a health care provider, while at the same time setting forth limited circumstances in which the release of such information to specified entities or individuals is permissible.’ [Citations.]” (*Brown v. Mortensen* (2011) 51 Cal.4th 1052, 1070.)

Under section 56.10, subdivision (a)—absent exceptions inapplicable here—“[a] provider of health care, health care service plan, or contractor *shall not disclose* medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization” (Italics added.)

Section 56.35 provides that “[i]n addition to any other remedies available at law, a patient whose medical information has been used or disclosed in violation of [s]ection 56.10 . . . and who has sustained economic loss or personal injury therefrom may recover compensatory damages, punitive damages not to exceed three thousand dollars (\$3,000), attorneys’ fees not to exceed one thousand dollars (\$1,000), and the costs of litigation.”

III. StrataCare Did Not Disclose Farhood’s Medical Information within the Meaning of the Confidentiality Act

A. Disclosure requires an affirmative communicative act

The Legislature’s intent is “the touchstone of statutory interpretation[.]” (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) “Our first step [in determining the Legislature’s intent] is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. [Citations.]” (*Id.* at p. 633.)

What constitutes a disclosure under section 56.10, subdivision (a), is dispositive to this appeal. The Confidentiality Act does not define the term “disclose,”⁴ but its plain meaning clearly indicates that it “is an active verb.” (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 564 (*Regents*); see also Webster’s II New College Dict. (2001) p. 324 [defining “disclose” as “[t]o expose to view” or “[t]o make known”]; Black’s Law Dict. (9th ed. 2009) p. 531 [defining “disclosure” as “[t]he act or process of making known something that was previously unknown; a revelation of facts”].) Thus, “in order to ‘disclose’ something, the information holder must commit some affirmative, voluntary act.” (*In re Anthem Data Breach Litigation* (N.D. Cal. 2016) 162 F.Supp.3d 953, 1003.)

The statutory structure of the Confidentiality Act further supports tethering the definition of “disclose” to an affirmative act. First, subdivisions (b) and (c) of section 56.10 also contain

⁴ Section 56.05 provides several definitions for the purposes of the Confidentiality Act but does not define “disclose” or related terms.

the term “disclose” and provide numerous exceptions to the nondisclosure mandate of subdivision (a), all of which involve mandatory or discretionary affirmative communicative acts. The use of the same word in different subsections of the same section strongly implies that the intended meaning of “disclose” in subdivision (a) of section 56.10 also refers to an affirmative communicative act. (See *Chandis Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475, 486 [“Generally, identical words in different parts of the same act . . . are construed as having the same meaning”].)

Second, if “disclose” as used in section 56.10 broadly means, as Farhood suggests, to make “in some way . . . a patient’s confidential medical information available for viewing[.]” other provisions of the Confidentiality Act would be superfluous. Section 56.101, subdivision (a), for example, imposes liability on “[a]ny provider of health care, health care service plan, pharmaceutical company, or contractor who *negligently* creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information” (Italics added.) In adding section 56.101 to the Confidentiality Act in 1999, the Legislature created “the duty not only to refrain from unauthorized disclosures of confidential medical information but also to maintain such information ‘in a manner that preserves the confidentiality of the information contained therein’ [citation]—storage-related duties far broader than the duty created by section 56.10.” (*Regents, supra*, 220 Cal.App.4th at p. 566.) Farhood’s broad definition of “disclose” would render section 56.101 largely, if not entirely, superfluous to section 56.10, which we will not interpret as the Legislature’s intent. (See *Wells v. One2One Learning Foundation*

(2006) 39 Cal.4th 1164, 1207 [“[I]nterpretations which render any part of a statute superfluous are to be avoided”].)

Given its usual definition and context in the statutory scheme, we interpret “disclose” as “denoting . . . an affirmative act of communication.” (*Regents, supra*, 220 Cal.App.4th at p. 564.) Thus, a disclosure within the meaning of section 56.10, subdivision (a), “occurs when the health care provider [or other covered entity] affirmatively shares medical information with another person or entity. [Citation.]” (*Sutter Health, supra*, 227 Cal.App.4th at pp. 1555–1556.)

B. StrataCare did not affirmatively communicate medical information to the credit union

It is undisputed that the original envelope sent by StrataCare containing the statement of benefits was addressed to Farhood at the credit union’s physical address. It was not mailed “in care of” the credit union; indeed, the credit union’s name did not appear in any form on the envelope. In short, the statement of benefits was addressed explicitly to Farhood, and Farhood only.

Although disputing that an affirmative communicative act is required under section 56.10, subdivision (a), Farhood argues that StrataCare engaged in such an act by mailing the statement of benefits regardless of whether it intended to communicate with the credit union. This alternative argument is unpersuasive. To whom the affirmative communicative act is directed is a crucial factor in determining whether the disclosure is authorized. A disclosure to an authorized recipient—such as the patient—does not violate the Confidentiality Act. Thus, while mailing the statement of benefits to Farhood at the credit union’s address was an affirmative communicative act, it was a disclosure to

Farhood, not to the credit union. There was no affirmative transfer of information to an unauthorized party, and thus no violation of section 56.10, subdivision (a).⁵

Based on the undisputed evidence, Farhood could not establish that StrataCare disclosed his confidential medical information to the credit union within the meaning of section 56.10, subdivision (a). Summary judgment was therefore properly granted. (See *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618 [“A defendant seeking summary judgment must show that the plaintiff cannot establish at least one element of the cause of action”].)

⁵ StrataCare acknowledges that its actions might have given rise to a claim under sections 56.101 and 56.36 regarding the negligent release of confidential medical information. Farhood did not, however, bring claims under those sections. We therefore need not, and decline to, address whether “disclose” and “release” are used synonymously in the Confidentiality Act or whether an affirmative communicative act is a required element of a cause of action under sections 56.101, subdivision (a), and 56.36, subdivision (b).

DISPOSITION

The judgment of the trial court is affirmed. StrataCare is entitled to its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT